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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 595

W. O. ROBERTS, Superintendent of the Five Tribes Agency, for AGNES QUAPAW HOFFMAN and JEAN ANNE QUAPAW HOFFMAN, Restricted Quapaw Indians, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 21-26) is unreported.

JURISDICTION

The judgment of the Court of Claims was entered on January 3, 1950 (R. 26). The petition for a writ

of certiorari was filed on February 11, 1950. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1255 (1).

QUESTION PRESENTED

Whether the Court of Claims erred in denying, as allowable deductions under Section 23 (a) (2) of the Internal Revenue Code and the applicable regulation, legal expenses paid by restricted Indians in defending their right and title to property acquired under a will.

STATUTE AND REGULATIONS INVOLVED

The applicable portions of the pertinent statute and regulations are set forth in the Appendix, *infra,* pp. 11-13.

STATEMENT

The special findings of fact of the Court of Claims (R. 15-21) may be summarized as follows:

Petitioner is a citizen of the United States, a resident of Muskogee, Oklahoma, and the Superintendent of the Five Tribes Agency, which includes the Quapaw Tribe Sub-Agency; he is the acting representative of the Secretary of the Interior, who is by federal statute law the trustee of property of restricted Indians, including members of the Quapaw Tribe; and is the fiduciary of Agnes Quapaw Hoffman and Jean Anne Quapaw Hoffman whose individual federal income taxes are in controversy (R. 15).

Both taxpayers are citizens of the United States, residents of Ottawa County, Oklahoma, and restricted full-blood Quapaw Indians (R. 15), who inherited lands from Benjamin Quapaw, deceased; the lands are fully restricted and cannot be sold or otherwise disposed of without the approval of the Secretary of the Interior (R. 20).

Benjamin Quapaw, deceased, was a citizen of the United States, a full-blood restricted Quapaw Indian, and a resident of Ottawa County, Oklahoma, at the time of his death on May 26, 1926. At his death, the decedent was seized and possessed of three restricted allotments of Quapaw tribal lands, certain mineral leases thereon yielding a 10% royalty, certain other real property which had been purchased with funds received as royalties from such mineral leases, and certain personal property, including cash and bonds (R. 15-16). All of this property was fully restricted and could not be sold, alienated, hypothecated or otherwise disposed of without the approval of the Secretary of the Interior. Decedent, by will executed October 28, 1924, devised and bequeathed all of his property and estate to his wife, Agnes, and his daughter Jean Anne, in equal shares. Such will was approved "so far as it relates to property under control of the United States" by the Assistant Secretary of the Interior on March 14, 1927 (R. 16).

Sometime after the death of Benjamin Quapaw and after the approval of his last will, one Lilia

Quapaw Hanson unsuccessfully petitioned the Secretary of the Interior for an order declaring her to be entitled to one-half of the restricted trust estate of her alleged father, Benjamin Quapaw, deceased. Her petition was based upon allegations claiming that the deceased had married about 1870; that Lilia was born about 1874 as the lawful issue of that marriage, and that her parents had been divorced in accordance with Creek custom (R. 16).

Lilia Quapaw Hanson later instituted suit in the District Court of the United States for the Northern District of Oklahoma against Agnes Quapaw Hoffman, Jean Anne Quapaw Hoffman, and others, claiming an undivided one-half interest in all property, real, personal and mixed, restricted or unrestricted, of which her alleged father Benjamin Quapaw died seized. Such claim was based upon alleged facts showing Lilia and Jean Anne to be the only living children of Benjamin Quapaw, deceased, and upon other facts from which a question arose as to the validity of his marriage to Jean Anne's mother and also the validity of his last will and testament. The trial court held that it was without jurisdiction and dismissed the suit. This decision was, upon appeal, reversed and the case remanded with instructions. *Hanson* v. *Hoffman,* 113 F. 2d 780 (C. A. 10th). The lower court upon retrial held for the defendants. This decision is not reported (R. 16-17).

After the above-mentioned litigation had been concluded, one Stella White filed in the United States District Court for the Northern District of Oklahoma a civil suit claiming that she was a lineal descendant of Benjamin Quapaw by his alleged first marriage. The complaint in this suit named Agnes Quapaw Hoffman and Jean Anne Quapaw Hoffman defendants, and its allegations were similar to those in *Hanson* v. *Hoffman, supra.* The case went to trial and judgment was entered in favor of the defendants. It is not reported (R. 17).

During 1942, Agnes Quapaw Hoffman paid expenses incurred in the defense of the suit filed by Lilia Quapaw Hanson aggregating $30,050.95 and Jean Anne Quapaw Hoffman paid expenses similarly incurred aggregating $42,550.64. During 1943, Agnes Quapaw Hoffman paid expenses incurred in the defense of the suit filed by Stella White aggregating $32,732.22 (R. 17).

The policy of the Secretary of the Interior is and always has been that no restricted lands producing oil, gas, lead, zinc, or other valuable minerals, would be sold or the restrictions removed therefrom so long as such lands were valuable for the production of royalty income. By reason of this policy, the Secretary of the Interior would not consent to the sale or other disposition of the restricted allotted and inherited lands devised to the taxpayers herein by Benjamin Quapaw, deceased. The

continuing and permanent policy of the Secretary of the Interior is to defend the Indians against the encroachments or claims of non-Indians. When there is a dispute between Indians, the policy of the Department is not to take sides, but to allow the Indians to select their own counsel in all cases where litigation is necessary. In following this policy, the Department fixes the amount of attorney's fees to be expended from restricted funds, as was done in this case (R. 20-21).

Upon the foregoing facts, the Court of Claims held that the legal expenses paid by taxpayers in 1942 and 1943 in defense of their right to the property received from the estate of Benjamin Quapaw were not allowable deductions under Section 23 (a)(2) of the Internal Revenue Code and Section 29.23(a)-15 of Treasury Regulations 111. Accordingly it dismissed the petitions. (R. 21-26.)

ARGUMENT

Contrary to the petitioner's contention (Pet. 20-21), the legal expenses involved in this case were patently incurred, as the Court of Claims held, in defense of the taxpayers' right and title to the properties received under the will of Benjamin Quapaw, which titles were attacked in whole or in part in the suits filed by Lilia Hanson and Stella White (R. 16, 17).[1] As such, the expenses were

[1] Neither the findings of the Court of Claims nor the stipulation of facts (not included in the record in this Court)

properly held by the Court of Claims to be a part of the cost of acquiring the property and not to be deductible as ordinary and necessary expenses under Section 23 (a)(2) of the Internal Revenue Code (Appendix, *infra,* pp. 11-12). See Section 29.23 (a)-15(b) of Treasury Regulations 111 (Appendix, *infra,* p. 13). See also authorities cited by the Court of Claims (R. 24).

Indeed, the petitioner concedes (Pet. 20-21) that this holding would be correct in the ordinary case but endeavors to create an exception for the taxpayers here on the theory that as restricted Quapaw Indians they, unlike other citizens, are entitled to a more liberal construction of the statute in their favor (Pet. 13, 21-22) and, further, that denial of the claimed deductions to taxpayers operates unfairly since taxpayers as Indian wards do not have control over sale of their properties as do other citizens (Pet. 17-18, 22). These arguments have no merit.

This Court has held that restricted Indians, like other citizens, are liable to pay federal income taxes under the all-inclusive terms of the revenue laws, where there is no provision of law definitely and clearly exempting them from the tax. *Superintendent* v. *Commissioner,* 295 U. S. 418; cf. also *Oklahoma Tax Comm'n* v. *United States,* 319 U. S.

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furnishes any support for the petitioner's assertion (Pet. 21) that about three fourths of the property involved in the *Hanson* and *White* suits consisted of income which accrued after the death of Benjamin Quapaw.

598.[2] Section 23 (a)(2) of the Code and Section 29.23(a)-15(b) of the Regulations, here involved, do not expressly grant to restricted Indians the right to take annual deductions for non-business expenses of a capital nature. Such a right in their favor is not to be implied, and all the more so, since allowance of deductions from gross income is a matter of legislative grace, controlled by the terms of the statute granting the deduction, and does not turn on equitable considerations. *Deputy* v. *du Pont,* 308 U. S. 488, 493; *Interstate Transit Lines* v. *Commissioner,* 319 U. S. 590, 593. Nor is it inconsistent with the taxpayers' status as Indian wards not to exempt them from tax to the extent of not allowing them a deduction from gross income for capital expenditures. Cf. *Superintendent* v. *Commissioner, supra,* p. 421.

Moreover, the disallowance of the claimed deductions in this case does not discriminate against the taxpayers. All other citizens of the United States are denied deductions under Section 23 (a)(2) for similar expenditures. Although the petitioner asserts that the taxpayers in this case, unlike other taxpayers, will not, as restricted Indian wards, be able to sell the inherited properties and to deduct the expenditures in issue here as a cost of the

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[2] *Choate* v. *Trapp,* 224 U.S. 665, and *Carpenter* v. *Shaw,* 280 U.S. 363, cited by petitioner (Pet. 13), held that where there is doubt under a statute as to whether restricted Indians were intended to be exempt from taxation, the doubt is to be resolved in favor of exempting the Indians.

properties in determining their taxable profit or deductible loss on the sale (Pet. 17-18, 22), the record fails to support this assertion. It was found that the lands inherited from Benjamin Quapaw could not be disposed of without approval of the Secretary of the Interior and his policy was not to permit a sale of mineral producing lands so long as they were valuable for royalty purposes (R. 20). But there is nothing in the findings to suggest that, when the lands are no longer valuable for royalty purposes, they may not be sold. In any case taxpayers are hardly in a unique position in this respect since many taxpayers voluntarily adopt a policy of not selling mineral-bearing lands which are valuable for royalty purposes. Furthermore, petitioner has not shown that the taxpayers are not entitled to annual depletion deductions with respect to their royalty income from the leased mineral lands involved here (Sections 23 (m) and (n) and 114, Internal Revenue Code), such depletion deductions, of course, having the purpose of returning to taxpayers tax-free their total cost basis of the mineral-producing lands. See *United States* v. *Ludey,* 274 U. S. 295, 302; *Helvering* v. *Mountain Producers Corp.* 303 U. S. 376, 381.

There is thus no factual support in the record for petitioner's assumption that taxpayers will forever be barred from deducting the legal expenses if the deductions claimed in this suit are not allowed under Section 23 (a)(2). But even assuming

arguendo that this were so, that circumstance would not require allowance of the deductions. Section 23 (a)(2) of the Code and Section 29.23(a)-15(b) of the Regulations deny deductions for all expenses of a capital nature irrespective of whether or not a taxpayer will receive a tax benefit through deducting them in another form at some other time.

CONCLUSION

The decision of the court below is correct. There is no conflict. The petition should be denied.

Respectfully submitted,

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MARCH, 1950.

APPENDIX

Internal Revenue Code:

SEC. 23 [as amended by Sec. 121(a), Revenue Act of 1942, c. 619, 56 Stat. 798]. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

(a) *Expenses.*—

(1) *Trade or business expenses.*—

(A) *In General.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

* * *

(2) *Non-trade or non-business expenses.*—In the case of an individual, all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the manage-

ment, conservation, or maintenance of property held for the production of income.

* * *

(26 U.S.C. 1946 ed., Sec. 23.)

Treasury Regulations 111, promulgated under the Internal Revenue Code:

SEC. 29.23(a)-15. *Nontrade or Nonbusiness Expenses.*—(*a*) *In general.*—Subject to the qualifications and limitations in chapter 1 and particularly in section 24, an expense may be deducted under section 23(a)(2) only upon the condition that:

(1) it has been paid or incurred by the taxpayer during the taxable year (i) for the production or collection of income which, if and when realized, will be required to be included in income for Federal income tax purposes, or (ii) for the management, conservation, or maintenance of property held for the production of such income; and

(2) it is an ordinary and necessary expense for either or both of the purposes stated in (1) above.

* * * * *

Expenses, to be deductible under section 23 (a)(2), must be "ordinary and necessary," which presupposes that they must be reasonable in amount and must bear a reasonable and proximate relation to the production or collection of taxable income or to the management,

conservation, or maintenance of property held for the production of income.

(*b*) Except for the requirement of being incurred in connection with a trade or business, a deduction under this section is subject to all the restrictions and limitations that apply in the case of the deduction under section 23(a)(1)(A) of an expense paid or incurred in carrying on any trade or business. * * *

Expenditures incurred in defending or perfecting title to property, in recovering property (other than investment property and amounts of income which, if and when recovered, must be included in income), or in developing or improving property, constitute a part of the cost of the property and are not deductible expenses. Attorneys' fees paid in a suit to quiet title to lands are not deductible; but if the suit is also to collect accrued rents thereon, that portion of such fees is deductible which is properly allocable to the services rendered in collecting such rents. Expenditures incurred in protecting or asserting one's rights to property of a decedent as heir or legatee, or as beneficiary under a testamentary trust, are not deductible expenses. * * *

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